* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ Crl. Rev. P. No.897-902/2006

Reserved on :July 27, 2007
Decided on : August 3,2007

HARINDER SINGH & ORS. ..... Petitioners
Through Mr. Jitendra Sethi,
Advocate

versus

STATE ..... Respondent
Through : Mr. Pawan Sharma, APP for State

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes

2. To be referred to the Reporter or not? yes

3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat:

1. The present criminal revision petition challenges the order on charge dated 18.9.2006 by the Learned ASJ. Charges were framed under section 302/34, 406/ 304B/ 498A/ 34 of the Indian Penal code. (IPC) against the accused, including the Petitioners here.

2. The brief facts necessary to decide this present petition are as follows:

One Sh. Bhupinder Singh (hereafter "the Husband") and Smt. Sashi(hereafter the deceased) were married on 24.5.2002 and a son was later born out of the wedlock. The husband was posted with the Delhi Police in its Security Department. The couple were residing in their official accommodation at Police lines, Narela along with their son and the husband's younger brother Vijay.

3. The Petitioner is an uncle of the husband. The deceased died an unnatural death on 29.4.2005 in the matrimonial home and the post mortem report opined the death could be homicidal in nature. The husband was thereafter arrested and since then he is in custody.

4. After the death of the deceased an inquest was conducted by the Ld. S.D.M and statements of Sh. Chandervir Singh and Smt. Kamla(parents of the deceased), Smt. Birla and Sh. Dharmavir(the Mausi and Mausa)of the deceased were recorded. Those statements mentioned that the deceased was living happily with her husband at Delhi; there was no harassment of any kind and they did not suspect the husband and the others for their daughter's death.

5. According to the prosecution, on 30.06.2005, two months after the husband's arrest statements under section 161 Cr.P.C of the deceased's parents, her mausa and mausi were recorded. They leveled the allegations of harassment caused to the deceased by her husband and the Petitioners for the reason that her

son's features did not match with that of his father's. The husband was doubting the deceased's character. The earlier statement was said to be made under the influence of the Petitioners. They allegedly were not allowed to see their daughter's body and were made to believe that she had committed suicide.

6. The learned counsel for the petitioner urged that it is a fact that the husband and the deceased were residing together at their separate residence in Delhi and the other Petitioners were not present there at the time of the incident. There is no statement from any one to that besides the husband, there was any support to him in the crime so as to invoke the provisions of Sec.201/34 IPC. Learned counsel contended that there were no specific allegations to show that the Petitioners had tortured or harassed the deceased for dowry "soon before" her death. He further contended that even the subsequent statements recorded do not contain specific allegations against the Petitioners. It was submitted that the statements of the neighbours recorded who did not dispute that the couple lived happily.

7. Counsel submitted that the deceased's family has falsely implicated the Petitioner's family. The husband's unmarried sister Lalitha and married Sister Rita and her husband ,residents of Baghpat, U.P , who are living separately were also implicated in the case by making frivolous allegations against them.

8. The trial court framed charges against the Petitioners for committing the

offences punishable under section302/34, 304B, 498A, 406, 201, 34 Indian Penal Code. The extracts of the order dated 18.9.2006 are as follows;

> *"Charges can be framed on grave suspicion alone. In the present case, admittedly the statements u/s 161 Cr.P.C and the supplementary statements too, make out a case against all the accused persons for the offences punishable u/s 304B, 498A/34 IPC. The arguments that there is no evidence of cruelty soon before death carries no weight as the deceased and her husband are stated to have shifted to the official quarter only a few months before the occurrence. Therefore, offence u/s 304B/ 498A and sec.406 r/w 34 IPC is made out against all the accused persons. Alternatively charge u/s 302 r/w Sec. 34 IPC may also be framed since the post mortem report records cause of death to be homicidal. Since, an attempt has been made to give impression of suicidal death to a homicidal death and also because scene of crime has been disturbed, charge u/s 201/34 IPC is made out against the accused persons".*

9. The Post mortem report of the deceased recorded that "Postmortem hanging and ante mortem struggle/assault. Mode of death homicide where possibility of creation of scene suggestive of suicidal scene exists."

10. I have considered the submission of parties and examined the materials on record. No doubt, when the First Information Report was lodged, no allegations

were leveled against the accused. However, in supplementary statements, recorded after the arrest, of the husband, instances of cruel behavior and dowry demands were made. Two features stand out here. One, the couple lived with the husband's family until a few months before the incident . The husband was a police officer. The initial statements of witnesses recorded by the police, were before his arrest. The supplementary statements were recorded after the arrest. These facts become significant, because at this stage the apprehension voiced by the witnesses was that his presence and influence inhibited them from making free statements. This factor cannot be discounted.

11. The argument that no specific allegations were made against the accused, or that they were afterthoughts, to my mind, cannot apply in the case of the husband's mother and paternal uncle (Petitioner Nos1 and 2). The petitioner lived with the deceased. Although the first petitioner did not live in the same house, he apparently lived close by; he allegedly used to taunt the deceased. The supplementary statements further alleged that the mother-in-law and first petitioner used to harass the deceased. In these circumstances, on an overall conspectus of the facts, the order on charge so far as it concerns those two accused. Petitioners, cannot be faulted. This is a case where the death occurred within the seven year period after marriage; the presumption under Section 113-B applies

12. Petitioner No. 3 and 4 are the brother and unmarried sister of the husband; petitioners 5 and 6 are the married sister and brother-in-law of the husband. As far as these accused are concerned, at the highest, the allegations are general and vague. In fact, the fifth and sixth respondent lived in a different place. On circumstances, there does not appear to be anything material to hold that there is "grave suspicion" about their involvement in the alleged crime.

13. In view of the above discussion, the petition has to partly succeed, so far as petitioner Nos. 3 to 6 are concerned. The impugned order charging them for the offences is set aside. The order as far as it relates to petitioner Nos 1 and 2, is hereby affirmed. The petition is, therefore, partly allowed to the above extent.

August 3,2007 **(S. RAVINDRA BHAT)**
JUDGE